

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**SAM TOCCO, et al.,**

Plaintiffs,

**HONORABLE PAUL D. BORMAN**

v.

**No. 05-70013**

**SAM ANTHONY TOCCO, et al.,**

Defendants.

and

**SAM ANTHONY TOCCO, et al.**

Counter-Plaintiffs,

v.

**SAM TOCCO, et al.,**

Counter-Defendants.

**SETTLEMENT**

**Thursday, August 25, 2006  
12:07 p.m.**

**APPEARANCES:**

For the Plaintiffs/  
Counter-Defendants:

**ROBERT P. ANDERSON**  
Dawda, Mann, Mulcahy &  
Sadler, PLC  
39533 Woodward Avenue  
Suite 200  
Bloomfield Hills, MI 48304  
(248) 642-3700

(Appearances continued)

To Obtain Certified Transcript, Contact:  
Leann S. Lizza, CSR-3746, RPR, CRR, RMR  
(313) 965-7510

1 APPEARANCES (Continued):

2 For Sam Anthony Tocco,  
3 Knollwood, and Joseph  
4 Zada:

**ROGER L. MYERS**  
Howard & Howard  
101 North Main Street  
Suite 300  
Ann Arbor, Michigan 48104  
(724) 222-1099

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August 25, 2006

Detroit, Michigan

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(Call to order of the court, 12:07 p.m.)

THE COURT CLERK: Tocco versus Tocco, 05-70013.

THE COURT: Okay. Parties please identify themselves for the record. And, also, have we secured someone on the phone?

MR. ANDERSON: Yes, Your Honor. If it may please the Court, Robert Anderson appearing on behalf of the Plaintiff.

MR. MYERS: Roger Myers, Your Honor, appearing on behalf of all of the Defendants with the exception of Hyman Lippitt and John Gonway.

THE COURT: Okay. And is the phone -- do we have someone on the phone? Would you identify yourself, sir or ma'am? Hi. Would you identify -- let me do it on this phone. So what line are we on? It's not showing on this phone.

THE COURT CLERK: I think it's on here.

THE COURT: All right. Okay. Can you hear me?

MR. TOCCO: Yes, I can. I'm Sam Anthony Tocco.

THE COURT: What is your name?

MR. TOCCO: Sam Anthony Tocco.

THE COURT: You are the grandson?

MR. TOCCO: Yes.

THE COURT: Okay. And is there someone else on the

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1 phone?

2 MR. TOCCO: Just myself.

3 MR. ANDERSON: No, Your Honor.

4 THE COURT: And you said that this does not cover  
5 Gonway and Lippitt, but --

6 MR. ANDERSON: Your Honor, I just --

7 THE COURT: Can you hear what's going on, Mr. Tocco?

8 MR. TOCCO: Yes. It's fading in and out, but I can  
9 hear for the most part.

10 THE COURT: Why don't you, both lawyers, come right up  
11 here by the phone. Come around this way and we can all do it  
12 together, and then if there's something that you're having  
13 trouble hearing, Mr. Tocco, you just let us know and we'll do  
14 it again.

15 MR. TOCCO: Thank you, Your Honor.

16 THE COURT: Okay. So the parties indicate that they  
17 are all here except for Mr. Gonway, spelled G-o-n-w-a-y, and he  
18 used to be and is now separate from the law firm of Hyman and  
19 Lippitt, and also the law firm of Hyman and Lippitt is not  
20 represented in this matter at today's hearing.

21 MR. ANDERSON: That's correct, Your Honor.

22 THE COURT: Okay. Now, you wish to put something on  
23 the record with regard to a settlement, Mr. Anderson? And then  
24 I'll hear from Mr. Myers, and then I'll ask Mr. Tocco a couple  
25 of questions.

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1 MR. ANDERSON: Yes, I do, Your Honor. Would you like  
2 me to present the settlement?

3 THE COURT: Right.

4 MR. ANDERSON: Regarding to --

5 THE COURT: First, let me know, there's two  
6 individuals seated. Since they're in front of the bar, they  
7 should just identify themselves.

8 Sir?

9 MR. TOCCO: Sam Tocco.

10 MR. ZADA: Joe Zada.

11 THE COURT: Okay. Please proceed, Mr. Anderson.

12 MR. ANDERSON: Thank you, Your Honor.

13 Your Honor, the parties have reached a settlement  
14 agreement whereby Sam Anthony Tocco would pay \$2 million for  
15 the cemetery. The \$2 million note would be at the rate of 7  
16 percent interest. Payments per month, which would include  
17 interest, would be \$15,000 per month. Payments would be due on  
18 the 15th of each month, and the first payment would be due  
19 October 15th.

20 Your Honor, that note would have a 12-year balloon  
21 payment whereby the entire principle and interest would come  
22 due. The note would provide that it would be default in the  
23 note --

24 THE COURT: A little louder.

25 MR. ANDERSON: There would be default in the note if

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1 any liens or encumbrances against the property are filed, any  
2 consensual liens or encumbrances. If there's not consensual  
3 liens or encumbrances against the property, that Mr. Sam  
4 Anthony Tocco, grandson, will take immediate action to remove  
5 those liens. There will be no diminution of value outside of  
6 the ordinary course of business. All trust fund accounts that  
7 are required by the State shall be paid and remain current at  
8 the level required by the State and that there will be no sale  
9 of any of the assets of the cemetery without the prior  
10 permission of Sam Tocco, grandfather.

11 In addition, Your Honor, there would be a 15-day grace  
12 period after the 15th of the month in which payments could be  
13 made. If Sam Anthony Tocco goes into that grace period, there  
14 would be a \$200 penalty. The stock of the corporation would be  
15 held in escrow, and the escrow agent would be Rick Kaufman, who  
16 is a facilitator in this matter, if he's willing to act, or if  
17 he's not willing to act, another suitable person designated  
18 between the parties, and if the parties couldn't agree, then we  
19 would request that the Court assist us in finding a neutral  
20 escrow agent.

21 However, the escrow agreement will provide that if  
22 grandson misses any payments for any reason that the stock will  
23 immediately transfer back to grandfather and that there will be  
24 no right of offset or any right or dispute relative to the  
25 transfer of the stock back. If there's a missed payment, all

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1 the escrow agent needs to do is determine that the payment has  
2 not been made in the grace period and then the stock will  
3 transfer back -- or will transfer to grandfather.

4 In addition, any violation of a promissory note  
5 relative to unpaid liens or encumbrances or diminution in value  
6 will also cause the stock to transfer back to grandfather.

7 The promissory note, Your Honor, would be no recourse  
8 against grandson as long as he complies with the no diminution  
9 in value provision of the promissory note.

10 Relative to Mr. Zada, Your Honor, Mr. Zada will pay to  
11 grandfather through the law offices of Dawda, Mann, Mulcahy and  
12 Sadler the sum of \$700,000. The \$700,000 should be paid as  
13 follows. I'm sorry. It's \$725,000, Your Honor. The sum of  
14 725,000 shall be paid as follows: \$200,000 on October 30,  
15 2006; 200,000 on December 5, 2006; 200,000 on January 30, 2007;  
16 and 125,000 on March 1, 2007.

17 Mr. Zada will have a five-day grace period to make  
18 those payments. There will be a consent judgment executed by  
19 Mr. Zada in favor of Sam Tocco, grandfather, in the amount of  
20 \$725,000. However, that -- and that consent judgment would  
21 provide that any order of dismissal be set aside in favor so  
22 the consent judgment can enter, and that consent judgment would  
23 be held by myself. It would not be entered unless there's  
24 default in any of the payments after the grace period.

25 In addition, Mr. Zada will execute a mortgage against



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1 real property that he represents that he owns located at 737  
2 Lake Shore Drive, Grosse Pointe, Michigan, 48236, and that  
3 mortgage will be in the amount of \$725,000. If Mr. -- however,  
4 Plaintiff will not exercise either on the consent judgment or  
5 the mortgage unless Mr. Zada misses any one of the payments.  
6 If Mr. Zada makes all of the payments, the consent judgment  
7 will be returned to his attorney by myself, and the mortgage  
8 will be discharged.

9 Finally, Your Honor, while Hyman and Lippitt is not  
10 represented today, I would represent to this Court that within  
11 the last 20 minutes, half hour I did talk to Attorney Michael  
12 Sullivan, who is representing them, and he indicates that I  
13 have approval to represent to the Court that there will be paid  
14 to grandfather by Hyman and Lippitt and Gonway the sum of  
15 \$50,000 in consideration for a general full release of any  
16 claims against them and that, in addition, that the Hyman  
17 Lippitt firm which currently holds the escrow and trust will  
18 transfer --

19 THE COURT: The stock.

20 MR. ANDERSON: I mean hold the stock in escrow will  
21 transfer that stock to the new escrow agent under the agreement  
22 that I've outlined here today.

23 Your Honor, that constitutes a full and complete  
24 settlement of the claims. It would have standard terms and  
25 conditions releasing all of the parties from any further

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1 liability, and it's understood by the parties that this is the  
2 end of the litigation between them.

3 THE COURT: Okay. Let me ask Mr. Myers first. Do you  
4 have anything you want to add to what's been stated?

5 MR. MYERS: Yes. Thank you, Your Honor. Just a few  
6 points of clarification.

7 Just to follow up on the last point that Mr. Anderson  
8 mentioned, this is going to -- it's the intent of the parties  
9 for this to be a global resolution of the issues in this case.  
10 To that end, there will be -- there are two existing promissory  
11 notes that are currently in effect. In addition to the  
12 dismissal, there will be an extinguishment of those promissory  
13 notes to be replaced with the promissory note that was outlined  
14 by Mr. Anderson in this discussion.

15 THE COURT: Is that correct, Mr. Anderson?

16 MR. ANDERSON: That is correct.

17 THE COURT: Okay. Next.

18 MR. MYERS: The second point was Mr. Anderson  
19 indicated that as part of the agreement that Mr. Tocco  
20 grandson, Mr. Tocco, shall not sell any of the assets of the  
21 cemetery. I think it's important to clarify -- I just think it  
22 was a point of clarification -- that that's beyond the sale of  
23 assets in the ordinary course of business. Obviously, the  
24 cemetery is selling plots.

25 THE COURT: You're selling plots.

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1 MR. MYERS: Absolutely.

2 MR. ANDERSON: That's correct.

3 MR. MYERS: That's extraordinary assets, sales that  
4 we're referring to.

5 THE COURT: Let me just ask Mr. Anderson. Is that  
6 agreed to?

7 MR. ANDERSON: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. MYERS: The next point, Your Honor, was  
10 Mr. Anderson indicated that the triggering event for the  
11 transfer of the stock out of escrow to Grandfather Tocco would  
12 be if there was a missed payment. I thought he said in the  
13 grace period.

14 THE COURT: No, outside.

15 MR. MYERS: I just want to clarify it's beyond, beyond  
16 the 15-day grace period.

17 THE COURT: Is that correct, Mr. Anderson?

18 MR. ANDERSON: That's correct. That's correct.

19 MR. MYERS: The next item, Your Honor, was in  
20 Mr. Anderson's discussion of the consent judgment that's going  
21 to be executed and held, essentially as security for the  
22 installment payments to be made by Mr. Zada, the one thing that  
23 wasn't mentioned is that consent judgment will also provide  
24 that although the face amount of the consent judgment is  
25 725,000, if it ever is to be entered because of a default, it

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1 will be set off against whatever installments have been made in  
2 the interim against the installments that have been outlined  
3 that Mr. Zada has been made responsible for.

4 THE COURT: Is that correct, Mr. Anderson?

5 MR. ANDERSON: Yes, Your Honor.

6 MR. MYERS: I believe that's all the points of  
7 clarification I have, Your Honor.

8 THE COURT: Let me just ask one question with regard  
9 to the house that is going to be a possible security. If  
10 that's sold, then what happens?

11 MR. ANDERSON: Well, the sale proceeds would have to  
12 go against -- would have to be paid to pay down Mr. Zada's  
13 obligation then, Your Honor.

14 THE COURT: Is that something that's agreeable to you  
15 or do you want to ask Mr. Zada right now?

16 MR. ZADA: That's fine.

17 THE COURT: A little louder.

18 MR. ZADA: Yes. That's fine.

19 THE COURT: Okay. Let me ask, first, Mr. Sam Anthony  
20 Tocco on the phone, you've heard the resolution of this matter.  
21 Are you satisfied with what -- the terms that have been stated  
22 on the record?

23 MR. TOCCO: Yes, Your Honor.

24 THE COURT: Okay. Let me ask Mr. Tocco, grandfather,  
25 you've heard the terms of the resolution. Are you satisfied?

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1 MR. TOCCO: Yes, I am.

2 THE COURT: Let me ask Mr. Joseph Zada, you've heard  
3 the terms of the resolution. Are you satisfied?

4 MR. ZADA: Yes, sir.

5 THE COURT: Do any of the parties have anything  
6 further that they want to state at this time with regard to the  
7 settlement? Let me ask starting with Mr. Anderson.

8 MR. ANDERSON: No, Your Honor.

9 THE COURT: Mr. Myers?

10 MR. MYERS: No, Your Honor.

11 THE COURT: Mr. Sam Anthony Tocco?

12 MR. TOCCO: No, Your Honor.

13 THE COURT: Mr. Grandfather Tocco?

14 MR. TOCCO: No.

15 THE COURT: Mr. Zada?

16 MR. ZADA: No.

17 THE COURT: Okay. Then we are concluded. Thank you  
18 all.

19 MR. TOCCO: Yes, thank you.

20 MR. ZADA: Thank you.

21 MR. MYERS: Thank you, Your Honor.

22 MR. ANDERSON: Thank you.

23 THE COURT: Very good.

24 (Proceedings concluded, 12:20 p.m.)

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## 1 CERTIFICATION OF REPORTER

2  
3  
4 I, Leann S. Lizza, do hereby certify that the  
5 above-entitled matter was taken before me at the time and  
6 place hereinbefore set forth; that the proceedings were duly  
7 recorded by me stenographically and reduced to computer  
8 transcription; that this is a true, full and correct  
9 transcript of my stenographic notes so taken; and that I am  
10 not related to, nor of counsel to either party, nor interested  
11 in the event of this cause.

12  
13  
14 S/Leann S. Lizza

8-12-09

15 Leann S. Lizza, CSR-3746, RPR, CRR, RMR

Date  
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